

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

James Engle
Lewiston, New York)
)
)
)
)File No.: EB-FIELDNER-13-00011917
NAL/Acct. No.: 201432400011
FRN: 0023900285

FORFEITURE ORDER

Adopted: August 26, 2015**Released: August 26, 2015**

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$2,400 against James Engle for operating a radio transmitter without Commission authorization and intentionally causing interference to other users of the Citizens Band (CB) radio service. The CB radio rules are designed to foster cooperation among users in order to make the most efficient use of the CB band and reduce the potential for interference. CB station operators must not use radio frequency amplifiers to raise the power of their transmitters without Commission authorization. In addition, willfully and maliciously causing harmful interference undermines the utility of the CB radio service by preventing communications among users that comply with the CB radio rules. Mr. Engle admits the violations, but requests reconsideration of the penalty proposed against him because he took corrective actions to end his unauthorized operations causing harmful interference and in light of his purported inability to pay the forfeiture. We find that Mr. Engle's acknowledgement of the violations and his corrective efforts only took place after he received notice of the violations and do not warrant forfeiture cancellation or reduction. However, we find that reducing the forfeiture to \$2,400 is appropriate based on Mr. Engle's demonstrated inability to pay.

II. BACKGROUND

2. On August 28, 2014, the Enforcement Bureau (Bureau) issued the *NAL* proposing a \$22,000 forfeiture against Mr. Engle for his apparent willful and repeated violations of Sections 301 and 333 of the Communications Act of 1934, as amended (Act), and Sections 95.411(a) and 95.413(a) of the Commission's rules (Rules) by operating his CB station with an unauthorized amplifier and intentionally interfering with CB communications.¹ In his *NAL Response*, Mr. Engle does not dispute the violations, but presents two arguments for why the proposed penalty should be canceled or reduced.² First, Mr. Engle states that he immediately ceased his unauthorized operations causing harmful interference after he received notice of the violations from the Commission.³ Second, Mr. Engle asserts that he is unable to

¹ *James Engle*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 10133, 10135–36, para. 9 (Enf. Bur. 2014) (*NAL*); 47 U.S.C. §§ 301, 333; 47 C.F.R. §§ 95.411(a), 95.413(a). The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference.

² See James Engle, Response to Notice of Apparent Liability for Forfeiture (Sept. 24, 2014) (on file in EB-FIELDNER-13-00011917) (*NAL Response*).

³ See *id.* at 2.

pay the proposed forfeiture in light of his limited retirement income, and submitted federal tax returns supporting his request to cancel or reduce the proposed forfeiture.⁴

III. DISCUSSION

3. The Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ When we assess forfeitures, Section 503(b)(2)(E) requires that we take into account the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁸ As discussed below, we have fully considered Mr. Engle's *NAL Response* and find that a forfeiture reduction is warranted based on inability to pay.

A. Mr. Engle's Subsequent Corrective Actions Do Not Support a Forfeiture Cancellation or Reduction

4. Mr. Engle requests cancellation or reduction of the proposed forfeiture, admitting that he made a "big mistake," but ceased his unauthorized operations causing harmful interference to other CB radio operators immediately after receiving notice of the violations.⁹ While the Commission will generally reduce a proposed forfeiture based on the good faith corrective efforts of a violator, those corrective efforts must be taken *prior* to notification of the violation.¹⁰ As the Commission has repeatedly stated, "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."¹¹ Mr. Engle presented no evidence that he undertook corrective efforts to come into compliance with the Commission's rules prior to the inspection by FCC agents that uncovered the violations.¹² We therefore decline to reduce or cancel the proposed forfeiture on this basis.

⁴ See *id.* at 2, Attachment. On July 27, 2015, at the request of Commission staff, Mr. Engle provided updated financial data in support of his inability to pay claim.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ See *NAL Response* at 2.

¹⁰ See, e.g., *Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (stating that the Commission will generally reduce a forfeiture "based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation"); *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121, 122–23, para. 5 (Enf. Bur. 2014) ("The Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator when those corrective efforts were taken *prior* to Commission notification of the violation.") (emphasis in original); *Argos Net, Inc.*, Forfeiture Order, 28 FCC Rcd 1126, 1127, para. 4 (Enf. Bur. 2013) ("[C]orrective action taken after notification or inspection by the Commission does not mitigate the violation . . .").

¹¹ See, e.g., *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994) (citations omitted); *Exec. Broad. Corp.*, 3 FCC 2d 699, 700, para. 6 (1966) ("The fact that prompt corrective action was taken . . . does not excuse the prior violations.").

¹² Indeed, Mr. Engle has a history of causing interference to other CB radio operators and was warned previously in writing by the Bureau that his actions violated the Act and Rules. See Letter to James Engle from Laura Smith, Esq., Special Counsel, Enforcement Bureau (Feb. 15, 2013) (on file in EB-FIELDNER-13-00011917); Letter to James Engle from David C. Dombrowski, District Director, Philadelphia Office, Northeast Region, Enforcement Bureau (Apr. 1, 2013) (on file in EB-FIELDNER-13-00011917).

B. Mr. Engle's Demonstrated Inability to Pay Warrants a Forfeiture Reduction

5. Mr. Engle also seeks cancellation or reduction of the proposed forfeiture based on an inability to pay, and provided financial information supporting his claim.¹³ With regard to an individual's or entity's inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.¹⁴ Based on the financial documents provided by Mr. Engle, we find sufficient basis to reduce the forfeiture to \$2,400.¹⁵ However, we caution Mr. Engle that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.¹⁶ We have previously rejected inability to pay claims in cases of repeated intentional and malicious acts or otherwise egregious violations.¹⁷ We therefore warn Mr. Engle that we may impose significantly higher penalties regardless of his financial circumstances if the forfeiture imposed here does not serve as a sufficient deterrent or if future violations evidence a pattern of deliberate disregard for the Act and Rules.

6. Based on the record before us and in light of the applicable statutory factors, we conclude that Mr. Engle willfully and repeatedly violated Sections 301 and 333 of the Act and Sections 95.411(a) and 95.413(a) of the Rules by operating a radio transmitter without Commission authorization and intentionally causing interference to CB communications. We further find after consideration of the entire record, including Mr. Engle's *NAL Response* and supportive financial materials, that cancellation of the proposed forfeiture against Mr. Engle is unwarranted, but a reduction of the forfeiture amount to \$2,400 is appropriate based on his demonstrated inability to pay.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act¹⁸ and Section 1.80 of the Rules,¹⁹ James Engle **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand four hundred dollars (\$2,400) for willfully and repeatedly violating Sections 301 and 333 of the Act and Sections 95.411(a) and 95.413(a) of the Rules.²⁰

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release of this Forfeiture Order.²¹ If the forfeiture is not

¹³ *NAL Response* at 2, Attachment.

¹⁴ See *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); see also *Tommie Salter*, Forfeiture Order, 30 FCC Rcd 1041 (Enf. Bur. 2015) (finding reduced forfeiture fell within the percentage range that the Commission previously found acceptable).

¹⁵ This forfeiture amount falls within the percentage range that the Commission previously found acceptable. See *supra* note 14. If Mr. Engle finds it financially infeasible to make full payment of this amount within 30 days, he can request an installment plan as described in paragraph 10 of this Forfeiture Order.

¹⁶ See 47 U.S.C. § 503(b)(2)(E).

¹⁷ See, e.g., *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014) (noting that the Commission "has previously rejected inability to pay claims in cases of repeated or otherwise egregious violations"); *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweighed evidence concerning his ability to pay), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (Enf. Bur. 2013), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 16815 (Enf. Bur. 2013); *Whisler Fleurinor*, Forfeiture Order, 28 FCC Rcd 1087, 1090, para. 9 (Enf. Bur. 2013) (violator's demonstrated inability to pay outweighed by gravity of multiple intentional violations).

¹⁸ 47 U.S.C. § 503(b).

¹⁹ 47 C.F.R. § 1.80.

²⁰ 47 U.S.C. §§ 301, 333; 47 C.F.R. §§ 95.411(a), 95.413(a).

²¹ 47 C.F.R. § 1.80.

paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²²

9. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. James Engle shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²³ When completing the Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

10. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.²⁴ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

²² 47 U.S.C. § 504(a).

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁴ See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to James Engle at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director
Northeast Region
Enforcement Bureau